

RECORDATION NO. 9284-14 Filed & Recorded

MAR 15 1978 -9 40 AM

INTERSTATE COMMERCE COMMISSION  
Interstate Commerce Commission  
Washington, D. C.

Gentlemen:

RECEIVED  
MAR 15 9 35 AM '78  
CERTIFICATION UNIT  
RECORDATION NO. 9284 Filed & Recorded

MAR 15 1978 -9 40 AM

INTERSTATE COMMERCE COMMISSION

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and four counterparts each of a Conditional Sale Agreement dated as of February 1, 1978 and an Agreement and Assignment dated as of February 1, 1978 relating thereto.

The general description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Owner-Vendor under  
Conditional Sale  
Agreement and Assignor  
under Agreement and  
Assignment:

Evans Products Company  
2200 East Devon Avenue  
Des Plaines, Illinois 60018

Vendees under  
Conditional Sale  
Agreement:

National Railway Utilization  
Corporation  
860 Suburban Station  
1617 John F. Kennedy Boulevard  
Philadelphia, Pennsylvania 19103

Pickens Railroad Company  
402 Cedar Rock Street  
Pickens, South Carolina 29671

Assignee under  
Agreement and  
Assignment:

Continental Illinois National  
Bank and Trust Company  
231 South LaSalle Street  
Chicago, Illinois 60693

The undersigned is one of the Vendees named above and has knowledge of the matters set forth in the enclosed documents.

Please return the original and two copies of the Conditional Sale Agreement and the Agreement and Assignment to Robert C. Nash, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

8-074A-14  
MAR 15 1978  
50

ICC Washington, D. C.

-2-

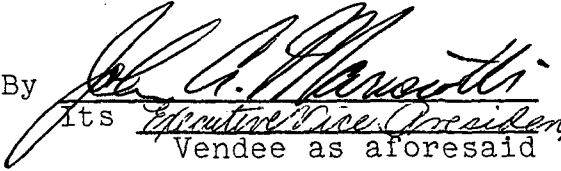
Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

NATIONAL RAILWAY UTILIZATION  
CORPORATION

By

its

  
*J. A. Harrell*  
*Executive Vice President*

Vendee as aforesaid

Enclosures

SCHEDULE A  
to Conditional Sale Agreement

MANUFACTURER.....	Evans Transportation Company
DESCRIPTION OF EQUIPMENT.....	50'6" 70-ton boxcars bearing identifying numbers NSL 101494 through NSL 101572, both inclusive
SPECIFICATIONS.....	Per Sale Agreement dated May 10, 1977 between Manufacturer and NRUC
BASE PRICE.....	\$33,800 per Item (\$2,670,200 for 79 Items)
MAXIMUM PRICE.....	\$34,018.98 per Item (\$2,687,500 for 79 Items)
DELIVER TO.....	Chamblee, Georgia
PLACE OF DELIVERY.....	Chamblee, Georgia
ESTIMATED DELIVERY DATES.....	February - April 15, 1978
OUTSIDE DELIVERY DATE.....	May 15, 1978

**Interstate Commerce Commission**  
**Washington, D.C. 20423**

**3/15/78**

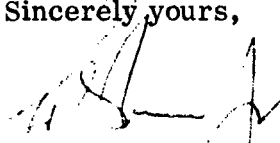
**OFFICE OF THE SECRETARY**

**Robert C. Nash  
Chapman and Cutler  
111 West Monroe Street  
Chicago, Illinois 60603**

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the  
provisions of Section 20(c) of the Interstate Commerce Act,  
49 U.S.C. 20(c), on **3/15/78** at **9:40am**,  
and assigned recordation number(s) **9284 & 9284-A**

Sincerely yours,

  
**H.G. Homme, Jr.**  
Acting Secretary

Enclosure(s)

**SE-30-T  
(6/77)**

- 7

## AGREEMENT AND ASSIGNMENT

Dated as of February 1, 1978

Between

EVANS TRANSPORTATION  
COMPANY

as Vendor

and

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

as Assignee

Re:

\$2,150,000 Principal Amount  
10% Conditional Sale Indebtedness  
Due 1979-1993

of

NATIONAL RAILWAY UTILIZATION CORPORATION

and

PICKENS RAILROAD COMPANY,  
Jointly and Severally9284-A  
RECORDATION NO. .... Filed & Recorded

MAR 15 1978 - 9 40 AM

INTERSTATE COMMERCE COMMISSION

(Pickens Railroad No. 78-1)  
(79 50'6" 70-Ton Boxcars)

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Attachment to Agreement and Assignment:

Exhibit 1 - Closing Certificate

## AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of February 1, 1978, between EVANS TRANSPORTATION COMPANY (the "Manufacturer") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, acting as Agent and Assignee under a Finance Agreement dated as of February 1, 1978 (the "Finance Agreement"), said Bank as so acting being hereinafter called the "Assignee".

WHEREAS, the Manufacturer and NATIONAL RAILWAY UTILIZATION CORPORATION ("NRUC") and PICKENS RAILROAD COMPANY ("Pickens") jointly and severally (said Pickens and NRUC being hereinafter sometimes collectively referred to as the "Vendees") have entered into a Conditional Sale Agreement dated as of February 1, 1978 (the "Conditional Sale Agreement"), covering the construction, sale and delivery on the conditions therein set forth by the Manufacturer, and the purchase by the Vendees of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually "Item" or "Items of Equipment").

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

### W I T N E S S E T H:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. Assignment by Manufacturer. The Manufacturer hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Manufacturer in and to each Item of Equipment when and as delivered and accepted and upon payment by the Assignee to the Manufacturer of the amount required to be paid under Section 5 hereof;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the various Items of Equipment pursuant to Sections 1 and 2.1 thereof and the right to receive the payments specified in Sections 2.3, 3.3(a) and 14.7 thereof and reimbursement for taxes paid or incurred by the Manufacturer and the right to indemnity from the Vendees for claims arising against the Manufacturer as provided in

Sections 12.1 and 13 thereof), and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendees under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all of the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Vendees to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the obligations of the Manufacturer to construct and deliver the various Items of Equipment to be built by it in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Sections 12.3 and 13 of the Conditional Sale Agreement or relieve the Vendees from their obligations to the Manufacturer under Sections 2, 3.3(a), 7, 12, 13 and 14 of the Conditional Sale Agreement, it being understood and agreed that notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 14 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Vendees shall be and remain enforceable by the Vendees, their successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendees with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Covenants and Agreements of Manufacturer. The Manufacturer covenants and agrees that it will deliver the various Items of Equipment to the Vendees, in accordance with the provisions of the Conditional Sale Agreement, and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the



Assignee and the Vendees that at the time of delivery of each Item of Equipment to the Vendees under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the right of the Manufacturer to receive payment of its invoice price therefor and the rights of the Vendees under the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Manufacturer to the Vendees; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendees thereunder.

The Manufacturer covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the purchase price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Vendees arising out of a breach by the Manufacturer of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof by such Manufacturer, or under Sections 12 and 13 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendees by the Manufacturer. The Manufacturer's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 14.4 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Vendees in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Manufacturer of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendees against and only against the Manufacturer and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Manufacturer will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges

and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right, except for any designs, articles or material specified by the Vendees and not manufactured by the Manufacturer. The Assignee will give notice to the Manufacturer of any suit, proceeding or action by or against the Assignee herein described.

The Manufacturer agrees that any amount payable to it by the Vendees, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Item of Equipment.

SECTION 3. Equipment Markings. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on both sides of each Item of Equipment, at the time of delivery thereof to the Vendees, in letters not less than one inch in height, the following legend:

"Ownership Subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

SECTION 4. Recordation. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. Conditions Precedent to Payment by Assignee. The Assignee, on or before 11:00 A.M., Chicago, Illinois time, on each Closing Date (the "Closing Dates") fixed as provided in Section 3.4 of the Conditional Sale Agreement with respect to a Group (as defined in Section 3.2 of said Agreement) of Equipment, shall pay to the Manufacturer by wire transfer of immediately available funds to such bank in the continental United States as the Manufacturer shall designate to the Assignee for the account of the Manufacturer an amount equal to that portion of the Purchase Price of such Items required to be paid pursuant to Section 3.3(b) of said Agreement; provided that there shall have been delivered to the Assignee or Messrs. Chapman and Cutler, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee and Messrs. Chapman and Cutler:

(a) Bill or Bills of Sale from the Manufacturer to the Assignee, transferring to the Assignee security title to the Items of Equipment in the Group and warranting to the Assignee

and to the Vendees that at the time of delivery thereof to the Vendees under the Conditional Sale Agreement the Manufacturer had legal title to such Items and good and lawful right to sell such Items, and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Vendees under the Conditional Sale Agreement;

(b) Certificate or Certificates of Acceptance signed by an inspector or other authorized representative of the Vendees stating that the Items of Equipment in the Group have been inspected and accepted by him on behalf of the Vendees and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

"Ownership Subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c".

(c) Invoice from the Manufacturer to the Vendees and the Assignee for the Items of Equipment in the Group accompanied by or having endorsed thereon a certification by the Vendees as to the correctness of the price of such Items as set forth in said invoice;

(d) Opinion of Messrs. Chapman and Cutler, special counsel to the investors (the "Investors") named in the Finance Agreement, addressed to the Assignee and the Investors, dated as of such Closing Date, to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (ii) this Assignment and, assuming the due authorization, execution and delivery by the Investors of the Finance Agreement, the Finance Agreement have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (iii) the Assignee is vested with all the rights, titles, interest, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) security title to the Items of Equipment in the Group is validly vested in the Assignee and such Items, at the time of delivery thereof to the Vendees under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only for the rights of the Vendees under the Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other

filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America, (vii) the offering, sale and delivery of the Conditional Sale Agreement and the conditional sale indebtedness payable thereunder under the circumstances contemplated by the Finance Agreement are exempted securities within the meaning of Section 3(a)(6) of the Securities Act of 1933, as amended, and Section 304(a)(4)(A) of the Trust Indenture Act of 1939, as amended, and it is not necessary, in connection with the offering, sale and delivery of the Conditional Sale Agreement, the conditional sale indebtedness payable thereunder and the Certificates of Interest issued pursuant to the Finance Agreement, to register any security under said Securities Act to register any security under said Securities Act or to qualify an indenture under said Trust Indenture Act, and (viii) the opinions of counsel for each of the Vendees is satisfactory in scope and form to special counsel and in their opinion the Assignee and the Investors are justified in relying thereon;

(e) Opinion of counsel for each of the Vendees addressed to the Assignee and the Investors, dated as of such Closing Date, to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) above, and stating that (i) such Vendee is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and is duly qualified to do business as a foreign corporation in all states where the character of its properties or the nature of its activities makes such qualification necessary; (ii) the Conditional Sale Agreement and the Finance Agreement have each been duly authorized, executed and delivered on behalf of such Vendee and are valid and binding instruments enforceable against such Vendee in accordance with their respective terms; and (iii) the execution and delivery by such Vendee of the Conditional Sale Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of such Vendee, or any indenture, agreement, or other instrument to which such Vendee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice or lapse of time, or both) a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of such Vendee;

(f) Opinion of counsel for the Manufacturer, addressed to the Vendees, the Assignee and the Investors, dated as of such Closing Date, to the effect set forth in clauses (iii)

and (iv) of subparagraph (d) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have each been duly authorized, executed and delivered by the Manufacturer and, assuming the due authorization, execution and delivery thereof by each other party thereto, are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their respective terms;

(g) A Closing Certificate dated as of such Closing Date, signed by the President or a Vice President of each of the Vendees, substantially in the form attached hereto as Exhibit 1; and

(h) Unless payment of the amount payable pursuant to Section 3.3(a) of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendees on such Closing Date, a receipt from the Manufacturer for such payment.

In giving the opinions specified in the preceding subparagraphs (d), (e) and (f), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in the preceding subparagraph (d), counsel may in fact rely as to the title to the Items of Equipment upon the opinion of counsel for the Manufacturer of such Items. In giving the opinions set forth in clauses (iii) and (iv) of Section 5(d), counsel for the Manufacturer may, to the extent relevant, rely upon the opinion of special counsel to the Investors set forth in Section 5(d)(vi) hereof.

The Assignee shall not be obligated to make any of the above mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof. The Assignee shall at the request of the Manufacturer or the Vendees execute or join in the execution of such supplemental

agreement as may be deemed necessary or appropriate to exclude, or if such Equipment shall have been delivered and accepted, to remove, any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

SECTION 6. Further Assignments. Subject to the terms and provisions of the Finance Agreement, the Assignee may assign in the entirety all of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendees thereunder. In the event of any such assignment each such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. Representation of Manufacturer; Further Assurances. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Manufacturer and the other parties thereto, and that it is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interest hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. Governing Law. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

SECTION 9. Execution in Counterparts. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument. It shall not be necessary that any counterpart be signed by all of the parties hereto so long as at least one counterpart is signed by each party hereto. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to each of the Vendees. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Manufacturer and the Assignee have caused this instrument to be executed in their respective corporate names by their officers or representatives duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

EVANS TRANSPORTATION COMPANY

By

Its

*Rheat*  
Vice President

(Corporate Seal)

Attest:

*Blount*  
Secretary

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO, as  
Agent and Assignee

By

*Myer*  
Its Vice President

(Corporate Seal)

Attest:

*Amel*  
Trust Officer

STATE OF ILLINOIS    )  
                              )   SS  
COUNTY OF COOK       )

On this 31 day of March, 1978, personally appeared Paul R. Leck to me personally known, who being by me duly sworn, says that he is a Vice Pres. of EVANS TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James P. Kelly  
Notary Public

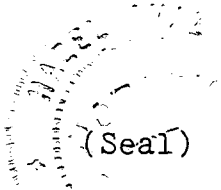
(Seal)  
My Commission Expires:

4-21-81



STATE OF ILLINOIS       )  
                              )  
COUNTY OF COOK        )   SS

On this 3<sup>RD</sup> day of MARCH, 1978, before me personally appeared M. J. KRUGER, to me personally known, who being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Hazel Ivaz Hazel Ivaz  
Notary Public

My Commission Expires: December 6, 1981

## CLOSING CERTIFICATE

To the Parties Listed on  
Schedule I Hereto

Gentlemen:

This Certificate is delivered to each of you in compliance with the requirements of the Agreement and Assignment dated as of February 1, 1978 between Evans Transportation Company and Continental Illinois National Bank and Trust Company of Chicago, as Agent and Assignee (the "Assignee"), and as an inducement to and as part of the consideration for your execution and delivery of the Finance Agreement dated as of February 1, 1978 (the "Finance Agreement") among the Assignee, the investors therein named (the "Investors") and the undersigned, National Railway Utilization Corporation and Pickens Railroad Company (each individually the "Vendee") and the delivery of funds by the Investors to the Assignee on the date hereof pursuant to the provisions of the Finance Agreement. The terms which are capitalized herein shall have the same meanings as in the Finance Agreement.

Each Vendee for itself hereby represents and warrants to each of you as follows:

1. Corporate Organization and Authority. The Vendee is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; has all requisite power and authority and all necessary licenses and permits to own and operate its respective properties and to carry on its business as now conducted; and is duly licensed or qualified and is in good standing as a foreign corporation in each jurisdiction in which such qualification is necessary to carry out the terms of the Conditional Sale Agreement.

2. Financial Statements. (a) The balance sheet of the Vendee as of May 31 in each of the years 1975 to 1977, both inclusive, and the statements of income and retained earnings and changes in financial position for the fiscal years ended on said dates prepared and certified by the accountants therein named have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of the Vendee as of such dates and the results of operations and changes in financial position of the Vendee for such periods.

(b) Since May 31, 1977, there has been no change in the condition, financial or otherwise, of the Vendee as shown on the balance sheet as of such date except changes in the ordinary

course of business, none of which individually or in the aggregate has been materially adverse.

3. Full Disclosure. The financial statements referred to in Paragraph 2 do not, nor does any written statement furnished by the Vendee to you in connection with the negotiation of the Conditional Sale Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact peculiar to the Vendee which the Vendee has not disclosed to you in writing which materially affects adversely nor, so far as the Vendee can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Vendee.

4. Pending Litigation. There are no proceedings pending or, to the knowledge of the Vendee threatened, against or affecting the Vendee or any subsidiary in any court or before any governmental authority or arbitration board or tribunal which if adversely determined would materially and adversely affect the properties, business, prospects, profits or condition (financial or otherwise) of the Vendee and its subsidiaries. Neither the Vendee nor any subsidiary is in default with respect to any order of any court or governmental authority or arbitration board or tribunal.

5. Transactions are Legal and Authorized. The execution and delivery by the Vendee of the Finance Agreement and the Conditional Sale Agreement and compliance by the Vendee with all of the provisions of said instruments --

(a) are within the corporate powers of the Vendee;  
and

(b) will not violate any provisions of any law or any order of any court or governmental authority or agency and will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under the Articles of Incorporation or By-Laws of the Vendee or any indenture or other agreement or instrument to which the Company is a party or by which it may be bound or result in the imposition of any liens or encumbrances on any property of the Company.

6. No Defaults. No Event of Default as defined in the Conditional Sale Agreement has occurred and is continuing and no event has occurred and is continuing which with the lapse of time or the giving of notice, or both, would constitute an Event of Default as therein defined. The Vendee is not in default in the payment of principal or interest on any indebtedness for borrowed money or in default under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been issued and no event has occurred and is continuing under the provisions

of any such instrument or agreement which with the lapse of time or the giving of notice, or both, would constitute an Event of Default thereunder.

7. Governmental Consent. No approval, consent or withholding of objection on the part of any regulatory body, state, Federal or local, is necessary in connection with the execution and delivery by the Vendee of the Finance Agreement or the Conditional Sale Agreement or compliance by the Vendee with any of the provisions of any of said instruments.

8. Taxes. All Federal income tax returns required to be filed by the Vendee have, in fact, been filed, and all taxes which are shown to be due and payable in such returns have been paid. No material controversy in respect of additional income taxes due since the date of the last Internal Revenue Service audit date is pending or to the knowledge of the Vendee threatened. The provision for taxes on the books of the Vendee is adequate for all open years, and for its current fiscal period.

Dated: , 1978

NATIONAL RAILWAY UTILIZATION CORPORATION

By \_\_\_\_\_  
Its \_\_\_\_\_

PICKENS RAILROAD COMPANY

By \_\_\_\_\_  
Its \_\_\_\_\_

SCHEDULE 1

Bankers Mutual Life Insurance Company  
500 West South Street  
Freeport, Illinois 61032

Attention: Mr. Louis Fauser

Standard Life Insurance Company of Indiana  
300 East Fall Creek Boulevard  
Indianapolis, Indiana 46205

Attention: Mr. Harry V. Wade

Illinois Mutual Life and Casualty Company  
411 Liberty Street  
Peoria, Illinois 61602

Attention: Mr. William A. Reed

American Mutual Life Insurance Company  
Liberty Building  
Sixth and Grand Streets  
Des Moines, Iowa 50307

Attention: Mr. William R. Engel

(to Closing Certificate)